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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,953	03/26/2004	Tracy Catherine Lemmon	TL01-P01	9831
7590	10/05/2006		EXAMINER	
Bernard Berman, Esq. Suite 700 1220 W 6th Street Cleveland, OH 44113				HOPKINS, CHRISTINE D
		ART UNIT	PAPER NUMBER	3735

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,953	LEMMON, TRACY CATHERINE	
	Examiner	Art Unit	
	Christine D. Hopkins	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 26 March 2004.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Specification

1. In paragraph [0001] at line 1, "claims priority to" should apparently read --"claims benefit of--.

Claim Objections

2. Claim 13 is objected to because of the following informalities: at line 14, the claim recites "the deactivation the record function" and should apparently read --the deactivation of the record function--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 13 and 16, the word "means" is preceded by the word "activation" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

At lines 4-5 of claim 14, it is unclear as to whether or not the “advance forward control and/or the advance backward control” are engaged since the claim further recites “optionally engaging” each component.

At lines 11-14 of claim 16, it is unclear what Applicant is intending to claim. The scope of the claim in regards to the “activation means” cannot be ascertained.

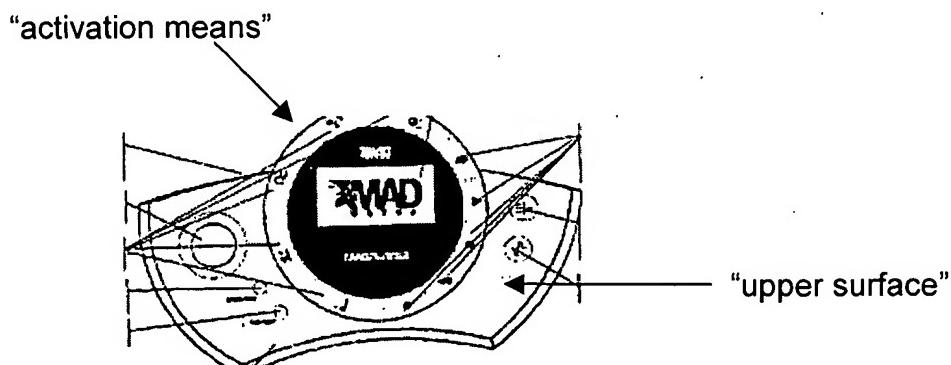
Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-12 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Georges et al. (U.S. Pub. No. 2004/0089142). Georges et al. (hereinafter Georges) teaches a system and accompanying methods for creating and playing back music recorded by an individual. With respect to claims 1-3, the device of Georges has a “housing unit” 10 comprising an upper surface (see depiction below).



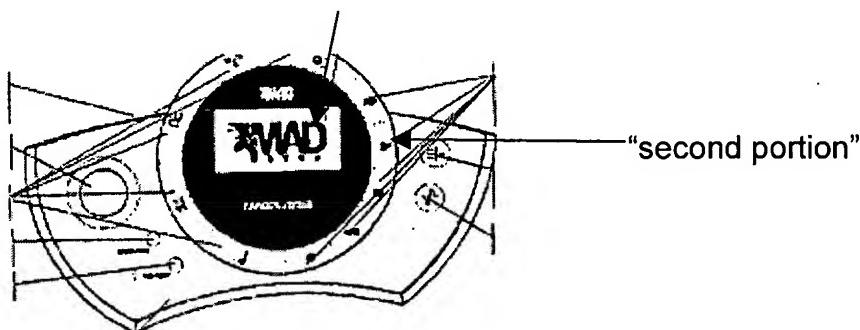
The device further includes a circular “activation means” (see depiction above) containing a plurality of buttons or functions and comprising greater than half of the “upper surface.” The “activation means” can be located in low lighting conditions because of the LCD screen 20 [0019]. An audio recording and playback means is disposed within the housing unit and comprises a microphone, memory storage space [0103] and a “device control component,” or microcontroller [0023] that serves to control the overall system operation. Engaging the “activation means” once begins a recording of a sound or voice, and pressing the means again deactivates it and ends the recording. The recorded file is stored within the memory storage component [0103]. Referring to claim 4, the keys or buttons forming the “activation means” are understood by the Examiner to be “textured,” as recognized by touch, for depressing and subsequently activating [0061].

In view of claims 5-6, the memory component as taught by Georges may be in the form of digital memory such as a removable Flash memory [0062].

Referring to claims 7-12, the device of Georges further includes playback controls, or function keys 11, such as start/stop, forward, reverse, save/edit and volume. The “file erase control,” or save/edit control, is a single key or “button” [0061]. An LCD screen 20 can display a message based on a particular mode for playback, thus rendering it capable of providing an identifying indication of a dream recollection selected for playback [0063].

Regarding claims 16-17, the device of Georges has a housing unit (as portrayed above) and an audio recording and playback means disposed within the housing unit

and comprising a microphone, a speaker, a memory component [0103] and a "device control component" or microcontroller [0023]. An "activation means," as best understood by the Examiner in light of the lack of clarity within the claim, has a first portion comprising a region of the upper surface (see depiction below) that can be lit via an LCD screen 20, and a second portion (see depiction below), containing various keys



and functions, coupled internally to the audio recording and playback means, that serves to turn on and off a recording function by depressing the record button. The recorded data is stored within the memory component [0103], such as a removable Flash memory device [0062]. The device of Georges further includes controls comprising a start/stop, forward, backward, and volume. The controls are coupled to the "audio recording and playback means" such that the media, or "dreams" recorded through a speaker to a memory portion, may be started, stopped, advanced, reversed or volume-controlled for specific playback of a particular pre-recording ([0061] and [0103]).

With respect to claims 18-19, the "file erase control," or save/edit control, as taught by Georges, is a single key or "button" [0061]. An LCD screen 20 can display a message based on a particular mode for playback, thus rendering it capable of

providing an identifying indication of a dream recollection selected for playback [0063].

In view of claim 20, the device of Georges may further include a USB port for transferring data back and forth to an external component such as a PC [0019].

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman (U.S. Patent No. 6,967,900). Chapman discloses a combination clock radio with a visual display that also enables the recording of voice messages. With respect to claims 13-15, Chapman teaches a recording and playback device comprising an "activation means" **28** readily located in a low ambient lighting condition due to a back-up light on the visual display and playback controls comprising start/stop controls, forward and backward controls, volume and erase controls. The device can be located upon waking from sleep due to the back-up light that illuminates the device. The "activation means" is engaged signaling the recording of a voice message, and subsequently "re-engaged" by releasing the "activation means" **38** (col. 5, lines 17-37 and col. 9, lines 14-31). Spoken messages are subsequently stored in voice memory chip **78** (col. 6, lines 29-32). The start or play button **40** controls play back of the recorded message, along with the "optional" engagement of the forward button **42** or

backward button **44**. The message may be stopped by pressing any button (col. 9, lines 14-31). An erase button **46** may be depressed for erasing the recorded voice messages (col. 5, lines 17-37).

Chapman does not explicitly teach the recording of a dream, however its use as a wake-up alarm (col. 2, lines 47-57) implies its location next to a bed whereby a person can activate a voice recording such as a dream or any such dialogue. Therefore, at the time of the invention it would have been obvious to one having ordinary skill in the art to have utilized the recording device of Chapman as a device for recording and playing back a dream recollection based on its location adjacent to a sleeping person who may be experiencing a dream that he/she wishes to record upon waking.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine D. Hopkins whose telephone number is (571) 272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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